County of Los Angeles
CHIEF EXECUTIVE OFFICE
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WILLIAM T FUJIOKA
Chief Executive Officer

June 23, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

REQUEST FOR CONSIDERATION OF
CALIFORNIA STATE ASSOCIATION OF COUNTIES PROPOSAL
TO SUPPORT 5-CENT INCREASE IN THE GASOLINE TAX
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)

SUBJECT

Request for consideration by your Board of a proposal by the Board of Directors of the California State Association of Counties (CSAC) to recommend that the State Legislature and the Governor support legislation increasing the State excise tax on gasoline, also known as the Highway User Tax Account (HUTA) or the gasoline tax, by 5-cents as an alternative to diverting local government's share of the gasoline tax to pay State General Fund obligations on transportation bond debt service in Fiscal Years 2009-10 and 2010-11.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Make a policy determination on the California State Association of Counties Board of Directors' recommendation to increase the gasoline tax by 5-cents as an alternative to the Highway User Tax Account funding take away adopted by the State Budget Conference Committee. The Board of Directors' recommendation is as follows:

   CSAC opposes the HUTA takeaway and ongoing suspension. CSAC supports a fee or user tax as replacement revenue to service debt (5-cents) related to transportation bonds to mitigate the HUTA loss. Further, should such a proposal exceed the transportation debt service needs (12-15 cents), CSAC supports these additional fees or taxes in a manner that ensures equal distribution between State and local governments.

2. Upon determination of a position, instruct the Sacramento advocates to convey and pursue the position to the Governor, the Los Angeles County Legislative Delegation, and the California State Association of Counties.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On Thursday, June 11, 2009, the State Legislature's Budget Conference Committee acted affirmatively on a proposal submitted by the Governor as a part of the May Revision to take almost all of the county and city portion of the gasoline tax in Fiscal Years (FYs) 2009-10 and 2010-11 in order to pay the State's General Fund obligations on transportation bonds. Specifically, the Budget Conference Committee's action, if enacted, would reduce the local share of gasoline tax revenues in FYs 2009-10 and 2010-11 as follows:

- FY 2009-10, reduce the local share from $1.05 billion to $64 million and shift $986 million to the State permanently – meaning the local share will not be paid back in the future.

- FY 2010-11, reduce the local share by from $1.05 billion to $305 million and shift $745 million to the State, also "permanently".

Pursuant to the proposed gasoline tax "take", the County of Los Angeles will lose approximately $109 million of an estimated $115 million in gasoline tax revenue in FY 2009-10 and $82 million of $115 million in FY 2010-11 for a combined total loss over the two fiscal years of $191 million out of $230 million gasoline tax revenue.

This redirection of local gasoline tax revenue will have a significant impact on the County. Historically, the County has used almost 100 percent of its gasoline tax revenues to finance the cost of ongoing operations and maintenance of the County's road system. Included in ongoing operations and maintenance are the following types of critical road services and programs, which are vital to the well-being and safety of the unincorporated communities and other persons who use our infrastructure: emergency road response, road maintenance (such as pothole patching, crack sealing, shoulder repairs), street sweeping, street lighting, snow removal, graffiti removal, litter pick-up, traffic signal maintenance, median and parkway landscaping and street tree maintenance, sidewalk repair, street signing and striping, and other key road safety services and programs.

In addition to the $191 million two-year gasoline tax loss to the County of Los Angeles, the 88 cities in the County will also lose over $230 million during the two year period.

Further, the California League of Cities has issued a legal opinion challenging the constitutionality of taking the local share of the gasoline tax, and there has been no State response to that challenge.

In response to the severe impact the loss of local gasoline tax will have upon the county and city road systems and economies, the Board of Directors of CSAC, consistent with the County's position, is opposing the shift of the local share of HUTA (attached). The CSAC Board of Directors is also recommending, as an alternative to the HUTA funding taking, that the Legislature and the Governor approve a 5-cents increase in the State excise tax on gasoline to raise the approximately $1 billion annually in revenue the State needs to make the transportation bond debt payments. (Each 1-cent of gasoline tax raises approximately $180 million.) A 5-cent increase would raise the State gasoline tax from 18-cents to 23-cents per gallon of gasoline. In addition, the CSAC Board of Directors is recommending that should such an increase in gasoline tax exceed the transportation debt service needs, CSAC supports the distribution of these additional revenues 50 percent to the State and 50 percent to counties and cities (25 percent to each).

In proposing the gasoline tax increase, CSAC has made the following points:

- Once the State gains access to the County's gasoline tax revenues, they will probably continue to take these revenues for the foreseeable future since the State's fiscal situation will not significantly improve over the next few years.

- Gasoline tax increases do not require voter approval. A gasoline tax increase may be enacted by two-thirds vote of the Legislature and affirmative action by the Governor.

- As a part of the February 2009 Budget agreement between the Governor and all four Legislative Caucuses, there was support for a 12-cent gasoline tax increase. This tax increase agreement was stricken at the last minute to secure a two-thirds budget vote in the State Senate. The magnitude of the current State fiscal crisis, compounded by an overwhelming negative local government response to the taking of local gasoline tax revenues, may create sufficient synergy to provide a two-thirds vote of the State Legislature for the gasoline tax increase.

- The gasoline tax has long been recognized as a "user fee" for the privilege of using the highways, streets, and roads throughout the State. This proposed increase is faithful to that principle, and it prevents sacrificing the County's efforts to maintain its streets and roads as a means to patch-up the State's transportation program.

- Offering a responsible alternative to the taking of critically-needed County gasoline tax revenue is likely the only way that the Budget Conference Committee's action on this issue can be reversed.

- If counties do not advocate strongly to protect their share of the gasoline tax as alternative to the State redirection of local gasoline tax revenue, then most certainly any future gasoline tax increase will continuously be allocated exclusively to the State even after the State's current transportation debt is retired rather than split between the State, counties, and cities.

FISCAL IMPACT/FINANCING

The State's permanent taking of $109 million in FY 2009-10 and $82 million in 2010-11 in gasoline tax revenues from the County will result in a $191 million loss of revenue to the County of Los Angeles and will have a severe impact on the level of road maintenance services that we provide and the condition of County unincorporated roads.

The CSAC proposal would increase the State gasoline tax to cover the State's transportation bond debt as long as needed. If the gasoline tax increase is maintained after the current debt service is retired, the CSAC proposal would have 50 percent of the revenues from the 5-cent increase shared between counties and cities: 25 percent to counties and 25 percent to cities. This would amount to $450 million per year increase in the local share of the gasoline tax: $225 million each for counties and cities. Los Angeles County's receives approximately 22 percent of the statewide counties gasoline tax pot and, therefore, our share of the 5-cent increase would be approximately $50 million per year.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Pursuant to State law, counties and cities currently receive 6.46-cents of the 18-cents gasoline tax; and the remaining 11.54-cents goes to the State. The 6.46-cents is split 50 percent to counties and 50 percent to cities.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Budget Conference Committee's adopted proposal will result in a significant reduction in the Department of Public Works' funding for ongoing operations and maintenance. Even if your Board were to determine to replace the State's take away of the County's gasoline tax revenues with road project funding (e.g., Proposition 42 and Measure R), as well as use gasoline tax fund balance, the Department of Public Works funding for ongoing operations and maintenance would still have to be reduced by $16 million in FY 2009-0 and an additional $3 million in FY 2010-11.

The CSAC proposal would allow critical road projects that are now programmed in FY 2009-10 with the County's Proposition 42 and Measure R funding to move forward and to restore revenue for ongoing operations and maintenance.

CONCLUSION

The Board of Directors of CSAC has requested that this proposal--to increase the gasoline tax by 5-cents--be considered by your Board as an alternative to mitigate the severe impact of the HUTA funding take away by the State Budget Conference Committee. The CSAC Board of Directors' recommendation is:

> *CSAC opposes the HUTA takeaway and ongoing suspension. CSAC supports a fee or user tax as replacement revenue to service debt (5-cents) related to transportation bonds to mitigate the HUTA loss. Further, should such a proposal exceed the transportation debt service needs (12-15 cents), CSAC supports these additional fees or taxes in a manner that ensures equal distribution between State and local governments.*

This is a matter for Board policy determination.

Respectfully submitted,

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:LS:GK
GF:PDeC:os

Attachment (1)

c: Executive Officer, Board of Supervisors
Acting County Counsel
Director of Public Works

MEMORANDUM

June 19, 2009

1100 K Street
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To: Board of Directors
California State Association of Counties

From: Paul McIntosh
Executive Director

Re: **Special Board of Director's Conference Call: Budget Actions to "Take" the Local Share of Gas Taxes: Potential Solutions**

The Budget Conference Committee (BCC) acted on Thursday, June 11 to "take" two years of nearly the entire local portion of the gas tax or Highway User Tax Account (HUTA) funding for general fund relief. This is equivalent to about $1.7 billion, with this loss shared equally between cities and counties. A legal opinion (copy attached) has been issued challenging the Constitutionality of "taking" the local share of the gas tax, but the Governor and Legislature have not responded to this challenge.

In addition to the HUTA loss, we understand that the Department of Finance (DOF) intends to borrow the first two quarters of the local portion of Prop 42 for cash flow purposes for an additional loss in FY 2009-10 of $288 million—shared equally by cities and counties.

In addition to the legal opinion, attached for your reference is a chart that outlines the above losses by county and a chart that outlines the job losses by county as a result of the permanent loss of HUTA.

Based upon existing policy, CSAC has supported a 5-cent increase in the gas tax as an alternative to the HUTA loss. The BCC did not discuss this alternative in making their decision to take the funds for two years.

During the February budget negotiations there was agreement between the Governor and all caucuses to increase the gas tax or HUTA by 12-cents with a significant amount initially directed towards debt service on the transportation bonds. The remaining amount was dedicated to the State system only. This was a major and alarming departure from past increases in the gas tax where a portion has always been dedicated towards the local system, which represents 82 percent of the State's maintained miles. This proposal was eliminated from the budget package at the very last moment in order to secure the last remaining Senate vote.

The gas tax is considered a "user fee" with a strong nexus towards investment for transportation purposes related to automobile use. There is a concerted effort to revisit an increase in the gas tax in current budget negotiations. There is significant concern that the proposal from the Legislature will again only include a State share, with no local apportionment. This would be very problematic and contrary to existing CSAC policy, which states:

"Existing funding levels must be maintained with historical shares of current funding sources ensured for counties (e.g. state and federal gas tax increases, etc.).

Although significant transportation revenues are raised at the local level through the imposition of sales taxes, additional state and federal revenue sources are needed such as additional gas and sales taxes, congestion pricing, public-private partnerships, and user or transaction fees to provide a diverse financing strategy. Further, additional revenue raising authority at the local and regional level is needed as well as other strategies as determined by individual jurisdictions and regions."

Should a gas tax increase proposal be considered, counties are not expected to share in a portion of that increase without CSAC support. This would be detrimental to current efforts to seek an increase in funding to address an identified $71 billion shortfall over the next decade just to preserve the existing local system.

On Monday, June 15, the CSAC Budget Task Force discussed the BCC action and concluded that the impacts and threat of the HUTA diversion may exceed that of the Proposition 1A borrowing. For these reasons, the Task Force agreed with staff that a CSAC Board of Director's meeting was necessary to discuss options to mitigate this loss and subsequent impacts. The recommendations discussed are outlined below.

Recommendations: CSAC opposes the HUTA takeaway and ongoing suspension. CSAC supports a fee or user tax as replacement revenue to service debt (5-cents) related to transportation bonds to mitigate the HUTA loss. Further, should such a proposal exceed the transportation debt service needs (12-15cents), CSAC supports these additional fees or taxes in a manner that ensures equal distribution between the State and local governments.